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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

THE PEOPLE,

Plaintiff and Respondent,

v.

JARROD ERNEST SPENCER HAYES,

Defendant and Appellant.

F077173

(Super. Ct. No. F13904939)

OPINION

THE COURT*

APPEAL from an order of the Superior Court of Fresno County. Gary D. Hoff, Judge.

Danalynn Pritz, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the State Attorney General, Sacramento, California, for Plaintiff and Respondent.

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* Before Levy, Acting P.J., Peña, J. and DeSantos, J.

Appellant Jarrod Ernest Spencer Hayes appeals from the court's denial of his motion to strike two firearm enhancements imposed in this case. Following independent review of the record pursuant to *People v. Wende* (1979) 25 Cal.3d 436, we affirm.

FACTUAL AND PROCEDURAL BACKGROUND¹

Hayes was an active member of the Villa Posse criminal street gang. Aaron Foster was an active member of the 107 Hoover Crips criminal street gang, which had a longstanding and violent rivalry with the Villa Posse gang.

On May 25, 2013, at around 1:30 a.m., Foster was talking to a woman at a gas station in Fresno when Hayes approached and said something to Foster. Hayes then raised a handgun and shot Foster in the head. Foster fell to the ground and Hayes fired six more shots. One bullet entered Foster's abdomen and bullet fragments struck Foster in the back. Both the head and abdomen wounds were fatal. Foster died instantly.

Deonte Dillingham saw Hayes shoot Foster. Dillingham dropped to the ground and heard additional shots. He was struck by a bullet in the upper thigh.

Hayes was subsequently convicted by a jury of the murder of Foster (Pen. Code, § 187/count 1)² and the assault with a firearm of Dillingham (§ 245, subd. (a)(2)/count 2). With respect to the murder conviction, the jury, in pertinent part, also found true a gang-related special circumstance (§ 190.2, subd. (a)(22)), a gang enhancement (§ 186.22, subd. (b)(1)), and a personal discharge of a firearm enhancement (§ 12022.53, subd. (d)). With respect to the assault charge, the jury found true a personal use of a firearm enhancement. (§ 12022.5, subd. (a).) Hayes was sentenced to 25 years to life on the personal discharge of a firearm enhancement, followed by an indeterminate term of life without the possibility of parole on the murder charge and special circumstance finding,

¹ Hayes's motion for judicial notice of the record and briefs filed in his prior appeal, *People v. Hayes* (Jan. 8, 2018, F071352) [nonpub. opn.], is denied.

² All further statutory references are to the Penal Code.

and a consecutive sentence of 14 years on the assault charge that included a 10-year firearm enhancement.

Following a timely appeal, on October 30, 2017, we initially filed an opinion affirming Hayes's conviction.

On November 6, 2017, Hayes filed a petition for rehearing arguing that the enactment of Senate Bill No. 620, which provides that a trial court has discretion to strike certain firearm enhancements, applied retroactively to his case and warranted remand for resentencing. After granting the petition, on January 8, 2018, we filed a revised opinion in which we affirmed the judgment and remanded the matter to the trial court to exercise its discretion under sections 12022.5, subdivision (c), and 12022.53, subdivision (h), as amended by Senate Bill No. 620 (Stats. 2017, ch. 682, § 2, eff. Jan. 1, 2018), and, if appropriate, following exercise of that discretion, to resentence Hayes. (*People v. Hayes* (Jan. 8, 2018, F071352) [nonpub. opn.])

On January 18, 2018, the Fresno County District Attorney filed a sentencing memorandum citing the following aggravating circumstances that militated against the court striking the firearm enhancements: (1) Hayes's offenses involved multiple victims; (2) he had a lengthy criminal history dating back to 2003 that included multiple felonies, including two "counts of [r]obbery and weapon possession[:]" (3) Hayes's offenses were increasing in seriousness; (4) his offenses involved great violence, bodily harm and the threat of great bodily harm; and (5) Hayes was on felony probation when he committed the underlying offenses.

On March 6, 2018, pursuant to this court's remand, the trial court held a hearing to consider whether to strike any of Hayes's firearm enhancements. Also on that date, defense counsel filed a sentencing memorandum in which he argued the court should strike the firearm enhancements because firearm enhancements disproportionately increase racial disparities in the prison population, significantly increase the prison

population, do not deter the commission of offenses like those committed by Hayes, add to the status and reputation of a gang and its members, and would not have any practical effect on Hayes's punishment because Hayes is going to serve the rest of his life in prison anyway. During the hearing, defense counsel also argued that the following were mitigating circumstances: (1) Hayes was diagnosed with emotional depression at age 13 for which he took medication until he was 15; (2) Hayes had a history of drug and alcohol abuse that included use of marijuana, ecstasy, and cocaine and he has never undergone treatment; and (3) the identity and location of Hayes's father was unknown. After hearing argument from counsel, the court denied Hayes's motion and resentenced him to the same sentence it originally imposed in this matter.

On March 14, 2018, Hayes filed a timely appeal.

Hayes's appellate counsel has filed a brief that summarizes the facts, with citations to the record, raises no issues, and asks this court to independently review the record. (*People v. Wende, supra*, 25 Cal.3d 436.) Hayes has not responded to this court's invitation to submit additional briefing.

Following an independent review of the record, we find that no reasonably arguable factual or legal issues exist.

DISPOSITION

The court's order reimposing the original sentence in this matter is affirmed.